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# CORRESPONDENCE

BETWEEN

MR. WEBSTER AND LORD ASHBURTON:

1. ON McLEOD'S CASE;
  2. ON THE CREOLE CASE;
  3. ON THE SUBJECT OF IMPRESSMENT.
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## CASE OF THE "CAROLINE."

*Mr. Webster to Lord Ashburton.*DEPARTMENT OF STATE,  
*Washington, July 27, 1842.*

MY LORD: In relation to the case of the "Caroline," which we have heretofore made the subject of conference, I have thought it right to place in your hands an extract of a letter from this Department to Mr. Fox, of the 24th of April, 1841, and an extract from the message of the President of the United States to Congress at the commencement of its present session. These papers you have, no doubt, already seen; but they are, nevertheless, now communicated, as such communication is considered a ready mode of presenting the view which this Government entertains of the destruction of that vessel.

The act of which the Government of the United States complains is not to be considered as justifiable or unjustifiable, as the question of the lawfulness or unlawfulness of the employment in which the "Caroline" was engaged may be decided the one way or the other. That act is of itself a wrong, and an offence to the sovereignty and the dignity of the United States, being a violation of their soil and territory—a wrong for which, to this day, no atonement, or even apology, has been made by her majesty's Government. Your lordship can not but be aware that self-respect, the consciousness of independence and national equality, and a sensitiveness to whatever may touch the honor of the country—a sensitiveness which this Government will ever feel and ever cultivate—make this a matter of high importance, and I must be allowed to ask for it your lordship's grave consideration.

I have the honor to be, my lord, your lordship's most obedient servant,  
DANIEL WEBSTER.

Lord ASHBURTON, &c., &c., &c.

*Extract of a letter from Mr. Webster to Mr. Fox, dated April 24, 1841.*

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The undersigned has now to signify to Mr. Fox that the Government of the United States has not changed the opinion which it has heretofore expressed to her majesty's Government of the character of the act of destroying the "Caroline."

It does not think that that transaction can be justified by any reasonable application or construction of the right of self-defence, under the laws of nations. It is admitted that a just right of self-defence attaches always to nations as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged of by the circumstances of each particular case; and when its alleged exercise

has led to the commission of hostile acts within the territory of a power at peace, nothing less than a clear and absolute necessity can afford ground of justification. Not having up to this time been made acquainted with the views and reasons at length which have led her majesty's Government to think the destruction of the "Caroline" justifiable as an act of self-defence, the undersigned, earnestly renewing the remonstrance of this Government against the transaction, abstains for the present from any extended discussion of the question. But it is deemed proper, nevertheless, not to omit to take some notice of the general grounds of justification stated by her majesty's Government, in their instruction to Mr. Fox.

Her majesty's Government have instructed Mr. Fox to say that they are of opinion that the transaction which terminated in the destruction of the "Caroline" was a justifiable employment of force for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, who, having been "permitted" to arm and organize themselves within the territory of the United States, had actually invaded a portion of the territory of her majesty.

The President can not suppose that her majesty's Government, by the use of these terms, meant to be understood as intimating that those acts violating the laws of the United States, and disturbing the peace of the British territories, were done under any degree of countenance from this Government, or were regarded by it with indifference, or that, under the circumstances of the case, they could have been prevented by the ordinary course of proceeding. Although he regrets that, by using the term "permitted," a possible inference of that kind might be raised, yet such an inference the President is willing to believe would be quite unjust to the intentions of the British Government.

That, on a line of frontier such as separates the United States from her Britannic majesty's North American provinces—a line long enough to divide the whole of Europe into halves—irregularities, violences, and conflicts, should sometimes occur, equally against the will of both Governments, is certainly easily to be supposed. This may be more possible, perhaps, in regard to the United States, without any reproach to their Government, since their institutions entirely discourage the keeping up of large standing armies in time of peace, and their situation happily exempts them from the necessity of maintaining such expensive and dangerous establishments. All that can be expected from either Government, in these cases, is good faith, a sincere desire to preserve peace and do justice, the use of all proper means of prevention; and that, if offences can not, nevertheless, be always prevented, the offenders shall still be justly punished. In all these respects, this Government acknowledges no delinquency in the performance of its duties.

Her majesty's Government are pleased, also, to speak of those American citizens who took part with persons in Canada engaged in an insurrection against the British Government as "American pirates." The undersigned does not admit the propriety or justice of this designation. If citizens of the United States fitted out, or were engaged in fitting out, a military expedition from the United States, intended to act against the British Government in Canada, they were clearly violating the laws of their own country, and exposing themselves to the just consequences which might be inflicted on them, if taken within the British dominions. But, notwithstanding this, they were certainly not pirates, nor does the undersigned think that it can advance the purpose of fair and friendly discussion, or hasten the accommodation of na-

tional difficulties, so to denominate them. Their offence, whatever it was, had no analogy to cases of piracy. Supposing all that is alleged against them to be true, they were taking a part in what they regarded as a civil war, and they were taking a part on the side of the rebels. Surely England herself has not regarded persons thus engaged as deserving the appellation which her majesty's Government bestows on these citizens of the United States.

It is quite notorious that, for the greater part of the last two centuries, subjects of the British crown have been permitted to engage in foreign wars, both national and civil, and in the latter in every stage of their progress; and yet it has not been imagined that England has at any time allowed her subjects to turn pirates. Indeed, in our own times, not only have individual subjects of that crown gone abroad to engage in civil wars, but we have seen whole regiments openly recruited, embodied, armed, and disciplined, in England, with the avowed purpose of aiding a rebellion against a nation with which England was at peace; although it is true that, subsequently, an act of Parliament was passed to prevent transactions so nearly approaching to public war, without license from the crown.

It may be said that there is a difference between the case of a civil war arising from a disputed succession, or a protracted revolt of a colony against the mother-country, and the case of the fresh outbreak or commencement of a rebellion. The undersigned does not deny that such a distinction may, for certain purposes, be deemed well founded. He admits that a Government, called upon to consider its own rights, interests, and duties, when civil wars break out in other countries, may decide on all the circumstances of the particular case upon its own existing stipulations, on probable results, on what its own security requires, and on many other considerations. It may be already bound to assist one party, or it may become bound, if it so chooses, to assist the other, and to meet the consequences of such assistance.

But whether the revolt be recent or long continued, they who join those concerned in it, whatever may be their offence against their own country, or however they may be treated, if taken with arms in their hands in the territory of the Government against which the standard of revolt is raised, can not be denominated pirates without departing from all ordinary use of language in the definition of offences. A cause which has so foul an origin as piracy can not, in its progress or by its success, obtain a claim to any degree of respectability or tolerance among nations; and civil wars, therefore, are not understood to have such a commencement.

It is well known to Mr. Fox that authorities of the highest eminence in England, living and dead, have maintained that the general law of nations does not forbid the citizens or subjects of one Government from taking part in the civil commotions of another. There is some reason, indeed, to think that such may be the opinion of her majesty's Government at the present moment.

The undersigned has made these remarks from the conviction that it is important to regard established distinctions, and to view the acts and offences of individuals in the exactly proper light. But it is not to be inferred that there is, on the part of this Government, any purpose of extenuating in the slightest degree the crimes of those persons, citizens of the United States, who have joined in military expeditions against the British Government in Canada. On the contrary the President directs the undersigned to say that it is his fixed resolution that all such disturbers of the national peace, and vio-

lators of the laws of their country, shall be brought to exemplary punishment. Nor will the fact that they are instigated and led on to these excesses by British subjects, refugees from the provinces, be deemed any excuse or palliation; although it is well worthy of being remembered that the prime movers of these disturbances on the borders are subjects of the Queen, who come within the territories of the United States, seeking to enlist the sympathies of their citizens, by all the motives which they are able to address to them, on account of grievances, real or imaginary. There is no reason to believe that the design of any hostile movement from the United States, against Canada, has commenced with citizens of the United States. The true origin of such purposes and such enterprises is on the other side of the line. But the President's resolution to prevent these transgressions of the laws is not, on that account, the less strong. It is taken, not only in conformity to his duty, under the provisions of existing laws, but in full consonance with the established principles and practice of this Government.

The Government of the United States has not from the first fallen into the doubts, elsewhere entertained, of the true extent of the duties of neutrality. It has held that, however it may have been in less enlightened ages, the just interpretation of the modern law of nations is that neutral States are bound to be strictly neutral; and that it is a manifest and gross impropriety for individuals to engage in the civil conflicts of other States, and thus to be at war while their Government is at peace. War and peace are high national relations, which can properly be established or changed only by nations themselves.

The United States have thought, also, that the salutary doctrine of non-intervention by one nation with the affairs of others is liable to be essentially impaired, if, while Government refrains from interference, interference is still allowed to its subjects, individually or in masses. It may happen, indeed, that persons choose to leave their country, emigrate to other regions, and settle themselves on uncultivated lands in territories belonging to other states. This can not be prevented by Governments which allow the emigration of their subjects and citizens; and such persons, having voluntarily abandoned their own country, have no longer claim to its protection, nor is it longer responsible for their acts. Such cases, therefore, if they occur, show no abandonment of the duty of neutrality.

The Government of the United States has not considered it as sufficient to confine the duties of neutrality and non-interference to the case of Governments whose territories lie adjacent to each other. The application of the principle may be more necessary in such cases, but the principle itself they regard as being the same, if those territories be divided by half the globe. The rule is founded in the impropriety and danger of allowing individuals to make war on their own authority, or, by mingling themselves in the belligerent operations of other nations, to run the hazard of counteracting the policy or embroiling the relations of their own Government. And the United States have been the first among civilized nations to enforce the observance of this just rule of neutrality and peace, by special and adequate legal enactments. In the infancy of this Government, on the breaking out of the European wars which had their origin in the French revolution, Congress passed laws, with severe penalties, for preventing the citizens of the United States from taking part in those hostilities.

By these laws it prescribed to the citizens of the United States what it un-

derstood to be their duty as neutrals, by the law of nations, and the duty, also, which they owed to the interest and honor of their own country.

At a subsequent period, when the American colonies of a European power took up arms against their sovereign, Congress, not diverted from the established system of the Government by any temporary considerations, not swerved from its sense of justice and of duty by any sympathies which it might naturally feel for one of the parties, did not hesitate, also, to pass acts applicable to the case of colonial insurrection and civil war. And these provisions of law have been continued, revised, amended, and are in full force at the present moment. Nor have they been a dead letter, as it is well known that exemplary punishments have been inflicted on those who have transgressed them. It is known, indeed, that heavy penalties have fallen on individuals (citizens of the United States) engaged in this very disturbance in Canada with which the destruction of the *Caroline* was connected. And it is in Mr. Fox's knowledge, also, that the act of Congress of March 10, 1838, was passed for the precise purpose of more effectually restraining military enterprises, from the United States into the British provinces, by authorizing the use of the most sure and decisive preventive means. The undersigned may add, that it stands on the admission of very high British authority, that during the recent Canadian troubles, although bodies of adventurers appeared on the border, making it necessary for the people of Canada to keep themselves in a state prepared for self-defence, yet that these adventurers were acting by no means in accordance with the feeling of the great mass of the American people, or of the Government of the United States.

This Government, therefore, not only holds itself above reproach in every thing respecting the preservation of neutrality, the observance of the principle of non-intervention, and the strictest conformity in these respects to the rules of international law, but it doubts not that the world will do it the justice to acknowledge that it has set an example not unfit to be followed by others; and that by its steady legislation on this most important subject, it has done something to promote peace and good neighborhood among nations, and to advance the civilization of mankind.

The undersigned trusts that when her Britannic Majesty's Government shall present the grounds, at length, on which they justify the local authorities of Canada in attacking and destroying the "*Caroline*," they will consider that the laws of the United States are such as the undersigned has now represented them, and that the Government of the United States has always manifested a sincere disposition to see those laws effectually and impartially administered. If there have been cases in which individuals, justly obnoxious to punishment, have escaped, this is no more than happens in regard to other laws.

Under these circumstances, and under those immediately connected with the transaction itself, it will be for her majesty's Government to show upon what state of facts, and what rules of national law, the destruction of the "*Caroline*" is to be defended. It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive, since the act, justified by the necessity of self-defence,

must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the "Caroline" was impracticable, or would have been unavailing. It must be shown that daylight could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity present and inevitable, for attacking her in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some and wounding others, and then drawing her into the current, above the cataract, setting her on fire, and, careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate which fills the imagination with horror. A necessity for all this, the Government of the United States can not believe to have existed.

All will see that, if such things be allowed to occur, they must lead to bloody and exasperated war. And when an individual comes into the United States from Canada, and to the very place on which this drama was performed, and there chooses to make public and vainglorious boast of the part he acted in it, it is hardly wonderful that great excitement should be created, and some degree of commotion arise.

This republic does not wish to disturb the tranquillity of the world; its object is peace, its policy peace. It seeks no aggrandizement by foreign conquest, because it knows that no foreign acquisitions could augment its power and importance so rapidly as they are already advancing by its own natural growth, under the propitious circumstances of its situation. But it can not admit that its Government has not both the will and the power to preserve its own neutrality, and to enforce the observances of its own laws upon its own citizens. It is jealous of its rights, and among others, and most especially, of the right of the absolute immunity of its territory against aggression from abroad; and these rights it is the duty and determination of this Government fully and at all times to maintain, while it will at the same time as scrupulously refrain from infringing on the rights of others.

The President instructs the undersigned to say, in conclusion, that he confidently trusts that this, and all other questions of difference between the two Governments, will be treated by both in the full exercise of such a spirit of candor, justice, and mutual respect, as shall give assurance of the long-continuance of peace between the two countries.

The undersigned avails himself of this opportunity to assure Mr. Fox of his high consideration.

DANIEL WEBSTER.

HENRY S. FOX, Esq.,

*Envoy Extraordinary and*

*Minister Plenipotentiary of Great Britain, &c.*

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*Extract from the Message of the President to Congress at the commencement of the second session of the 27th Congress.*

I regret that it is not in my power to make known to you an equally satisfactory conclusion in the case of the "Caroline" steamer, with the cir-



cumstances connected with the destruction of which, in December, 1837, by an armed force fitted out in the province of Upper Canada, you are already made acquainted. No such atonement as was due for the public wrong done to the United States by this invasion of her territory, so wholly irreconcilable with her rights as an independent Power, has yet been made. In the view taken by this Government, the inquiry whether the vessel was in the employment of those who were prosecuting an unauthorized war against that province, or was engaged by the owner in the business of transporting passengers to and from Navy island, in hopes of private gain, which was most probably the case, in no degree alters the real question at issue between the two Governments. This Government can never concede to any foreign Government the power, except in a case of the most urgent and extreme necessity, of invading its territory, either to arrest the persons or destroy the property of those who may have violated the municipal laws of such foreign Government, or have disregarded their obligations arising under the law of nations. The territory of the United States must be regarded as sacredly secure against all such invasions, until they shall voluntarily acknowledge inability to acquit themselves of their duties to others; and, in announcing this sentiment, I do but affirm a principle which no nation on earth would be more ready to vindicate, at all hazards, than the people and Government of Great Britain. If, upon a full investigation of all the facts, it shall appear that the owner of the "Caroline" was governed by a hostile intent, or had made common cause with those who were in the occupancy of Navy island, then, so far as he is concerned, there can be no claim to indemnity for the destruction of his boat, which this Government would feel itself bound to prosecute, since he would have acted not only in derogation of the rights of Great Britain, but in clear violation of the laws of the United States. But that is a question which, however settled, in no manner involves the higher consideration of the violation of territorial sovereignty and jurisdiction. To recognise it as an admissible practice, that each Government, in its turn, upon any sudden and unauthorized outbreak, which, on a frontier the extent of which renders it impossible for either to have an efficient force on every mile of it, and which outbreak, therefore, neither may be able to suppress in a day, may take vengeance into its own hands, and without even a remonstrance, and in the absence of any pressing or overruling necessity, may invade the territory of the other, would inevitably lead to results equally to be deplored by both. When border collisions come to receive the sanction or to be made on the authority of either Government, general war must be the inevitable result. While it is the ardent desire of the United States to cultivate the relations of peace with all nations, and to fulfil all the duties of good neighborhood towards those who possess territories adjoining their own, that very desire would lead them to deny the right of any foreign Power to invade their boundary with an armed force. The correspondence between the two Governments on this subject will, at a future day of your session, be submitted to your consideration; and, in the meantime, I can not but indulge the hope that the British Government will see the propriety of renouncing, as a rule of future action, the precedent which has been set in the affair at Schlosser.

*Lord Ashburton to Mr. Webster.*

WASHINGTON, July 28, 1842.

SIR: In the course of our conferences on the several subjects of difference which it was the object of my mission to endeavor to settle, the unfortunate case of the *Caroline*, with its attendant consequences, could not escape our attention; for although it is not of a description to be susceptible of any settlement by a convention or treaty, yet, being connected with the highest considerations of national honor and dignity, it has given rise, at times, to deep excitements, so as more than once to endanger the maintenance of peace.

The note you did me the honor of addressing me the 27th instant, reminds me that however disposed your Government might be to be satisfied with the explanations which it has been my duty to offer, the natural anxiety of the public mind requires that these explanations should be more durably recorded in our correspondence, and you send me a copy of your note to Mr. Fox, her Britannic majesty's minister here, and an extract from the speech of the President of the United States to Congress at the opening of the present session, as a ready mode of presenting the view entertained on this subject by the Government of the United States.

It is so far satisfactory to perceive that we are perfectly agreed as to the general principles of international law applicable to this unfortunate case. Respect for the inviolable character of the territory of independent nations, is the most essential foundation of civilization. It is useless to strengthen a principle so generally acknowledged by any appeal to authorities on international law, and you may be assured, sir, that her majesty's Government set the highest possible value on this principle, and are sensible of their duty to support it by their conduct and example, for the maintenance of peace and order in the world. If a sense of moral responsibility were not a sufficient security for their observance of this duty toward all nations, it will be readily believed that the most common dictates of interest and policy would lead to it in the case of a long conterminous boundary of some thousand miles, with a country of such great and growing power as the United States of America, inhabited by a kindred race, gifted with all its activity, and all its susceptibility on points of national honor.

Every consideration, therefore, leads us to set, as highly as your Government can possibly do, this paramount obligation of reciprocal respect for the independent territory of each. But however strong this duty may be, it is admitted by all writers, by all jurists, by the occasional practice of all nations, not excepting your own, that a strong overpowering necessity may arise, when this great principle may and must be suspended. It must be so for the shortest possible period, during the continuance of an admitted overruling necessity, and strictly confined within the narrowest limits imposed by that necessity. Self-defence is the first law of our nature, and it must be recognised by every code which professes to regulate the condition and relations of man. Upon this modification, if I may so call it, of the great general principle, we seem also to be agreed; and on this part of the subject I have done little more than repeat the sentiments, though in less forcible language, admitted and maintained by you in the letter to which you refer me.

Agreeing, therefore, on the general principle, and on the possible exception to which it is liable, the only question between us is whether this occurrence came within the limits fairly to be assigned to such exception—wheth-

er, to use your words, there was "that necessity of self-defence, instant, overwhelming, leaving no choice of means," which preceded the destruction of the *Caroline*, while moored to the shore of the United States. Give me leave to say, sir, with all possible admiration of your very ingenious discussion of the general principles which are supposed to govern the right and practice of interference by the people of one country in the wars and quarrels of others, that this part of your argument is little applicable to our immediate case. If Great Britain, America, or any other country suffer their people to fit out expeditions to take part in distant quarrels, such conduct may, according to the circumstances of each case, be justly matter of complaint; and perhaps these transactions have generally been in late times too much overlooked or connived at. But the case we are considering is of a wholly different description, and may be best determined by answering the following question. Supposing a man standing on ground where you have no legal right to follow him, has a weapon long enough to reach you, and is striking you down and endangering your life, how long are you bound to wait for the assistance of the authority having the legal power to relieve you? or, to bring the facts more immediately home to the case, if cannon are moving and setting up in a battery which can reach you and are actually destroying life and property by their fire, if you have remonstrated for some time without effect, and see no prospect of relief, when begins your right to defend yourself, should you have no other means of doing so than by seizing your assailant on the verge of a neutral territory?

I am unwilling to recal to your recollection the particulars of this case, but I am obliged very shortly to do so, to show what was at the time the extent of the existing justification, for upon this entirely depends the question whether a gross insult has or has not been offered to the Government and people of the United States.

After some tumultuous proceedings in Upper Canada, which were of short duration, and were suppressed by the militia of the country, the persons criminally concerned in them took refuge in the neighboring State of New York, and with a very large addition to their numbers openly collected, invaded the Canadian territory, taking possession of Navy island.

This invasion took place the 16th of December, 1837; a gradual accession of numbers and of military ammunition continued openly, and though under the sanction of no public authority, at least with no public hindrance, until the 29th of the same month, when several hundred men were collected, and twelve pieces of ordnance, which could only have been procured from some public store or arsenal, were actually mounted on Navy island, and were used to fire within easy range upon the unoffending inhabitants of the opposite shore. Remonstrances, wholly ineffectual, were made; so ineffectual, indeed, that a militia regiment, stationed on the neighboring American island, looked on without any attempt at interference, while shots were fired from the American island itself. This important fact stands on the best American authority, being stated in a letter to Mr. Forsyth, of the 6th of February, 1838, of Mr. Benton, attorney of the United States, the gentleman sent by your Government to inquire into the facts of the case, who adds, very properly, that he makes the statement "with deep regret and mortification."

This force, formed of all the reckless and mischievous people of the border, formidable from their numbers and from their armament, had in their pay, and as part of their establishment, this steamboat *Caroline*, the impor-

tant means and instrument by which numbers and arms were hourly increasing. I might safely put it to any candid man acquainted with the existing state of things, to say whether the military commander in Canada had the remotest reason, on the 29th of December, to expect to be relieved from this state of suffering by the protective intervention of any American authority. How long could a Government having the paramount duty of protecting its own people, be reasonably expected to wait for what they had then no reason to expect? What would have been the conduct of American officers? what has been their conduct under circumstances much less aggravated? I would appeal to you, sir, to say whether the facts which you say would alone justify this act, viz., "a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation," were not applicable to this case in as high a degree as they ever were to any case of a similar description in the history of nations.

Nearly five years are now past since this occurrence; there has been time for the public to deliberate upon it calmly, and I believe I may take it to be the opinion of candid and honorable men, that the British officers who executed this transaction, and their Government who approved it, intended no slight or disrespect to the sovereign authority of the United States. That they intended no such disrespect I can most solemnly affirm, and I trust it will be admitted that no inference to the contrary can fairly be drawn, even by the most susceptible on points of national honor.

Notwithstanding my wish that the explanation I had to make might not revive in any degree any feelings of irritation, I do not see how I could treat this subject without this short recital of facts, because the proof that no disrespect was intended is mainly to be looked for in the extent of the justification.

There remains only a point or two which I should wish to notice, to remove in some degree the impression which your rather highly colored description of this transaction is calculated to make. The mode of telling a story often tends to distort facts, and in this case more than in any other, it is important to arrive at plain unvarnished truth.

It appears from every account, that the expedition was sent to capture the Caroline when she was expected to be found on the British ground of Navy Island, and that it was only owing to the orders of the rebel leader being disobeyed, that she was not so found. When the British officer came round the point of the island in the night, he first discovered that the vessel was moored to the other shore. He was not by this deterred from making the capture, and his conduct was approved. But you will perceive that there was here, most decidedly, the case of justification mentioned in your note, that there should be "no moment left for deliberation." I mention this circumstance to show, also, that the expedition was not planned with a premeditated purpose of attacking the enemy within the jurisdiction of the United States, but that the necessity of so doing arose from altered circumstances at the moment of execution.

I have only further to notice the highly colored picture drawn in your note, of the facts attending the execution of this service. Some importance is attached to the attack having been made in the night, and the vessel having been set on fire and floated down the falls of the river; and it is insinuated rather than asserted, that there was carelessness as to the lives of the persons on board. The account given by the distinguished officer who commanded the expedition distinctly refutes, or satisfactorily explains these

assertions. The time of night was purposely selected as most likely to insure the execution, with the least loss of life, and it is expressly stated that, the strength of the current not permitting the vessel to be carried off, and it being necessary to destroy her by fire, she was drawn into the stream for the express purpose of preventing injury to persons or property of the inhabitants at Schlosser.

I would willingly have abstained from a return to the facts of this transaction, my duty being to offer those explanations and assurances which may lead to satisfy the public mind, and to the cessation of all angry feeling, but it appeared to me that some explanation of parts of the case, apparently misunderstood, might be of service for this purpose.

Although it is believed that a candid and impartial consideration of the whole history of this unfortunate event will lead to the conclusion, that there were grounds of justification as strong as were ever presented in such cases, and above all, that no slight of the authority of the United States was ever intended, yet, it must be admitted, that there was in the hurried execution of this necessary service a violation of territory, and I am instructed to assure you that her majesty's Government consider this as a most serious fact, and that far from thinking that an event of this kind should be lightly risked, they would unfeignedly deprecate its recurrence. Looking back to what passed at this distance of time, what is, perhaps, most to be regretted, is, that some explanation and apology for this occurrence was not immediately made; this, with a frank explanation of the necessity of the case might, and probably would have prevented much of the exasperation, and of the subsequent complaints and recriminations to which it gave rise.

There are possible cases in the relations of nations, as of individuals, where necessity, which controls all other laws, may be pleaded, but it is neither easy, nor safe to attempt to define the rights or limits properly assignable to such a plea. This must always be a subject of much delicacy, and should be considered by friendly nations with great candor and forbearance. The intentions of the parties must mainly be looked to, and can it for a moment be supposed, that Great Britain would intentionally and wantonly provoke a great and powerful neighbor?

Her majesty's Government earnestly desire that a reciprocal respect for the independent jurisdiction and authority of neighboring States may be considered among the first duties of all Governments; and I have to repeat the assurance of regret they feel that the event of which I am treating should have disturbed the harmony they so anxiously wish to maintain with the American people and Government.

Connected with these transactions, there have also been circumstances, of which I believe it is generally admitted that Great Britain has also had just ground to complain. Individuals have been made personally liable for acts done under the avowed authority of their Government; and there are now many brave men exposed to personal consequences for no other cause than having served their country. That this is contrary to every principle of international law it is useless for me to insist. Indeed, it has been admitted by every authority of your Government; but, owing to a conflict of laws, difficulties have intervened, much to the regret of those authorities, in giving practical effect to these principles; and for these difficulties some remedy has been by all desired. It is no business of mine to enter upon the consideration of them, nor have I sufficient information for the purpose; but I trust

you will excuse my addressing to you the inquiry, whether the Government of the United States is now in a condition to secure, in effect and in practice, the principle which has never been denied in argument, that individuals, acting under legitimate authority, are not personally responsible for executing the orders of their Government. That the power, when it exists, will be used on every fit occasion I am well assured; and I am bound to admit that, looking through the voluminous correspondence concerning these transactions, there appears no indisposition with any of the authorities of the Federal Government, under its several administrations, to do justice in this respect in as far as their means and powers would allow.

I trust, sir, I may now be permitted to hope that all feelings of resentment and ill will, resulting from these truly unfortunate events, may be buried in oblivion, and that they may be succeeded by those of harmony and friendship, which it is certainly the interest, and, I also believe, the inclination of all to promote.

I beg, sir, you will be assured of my high and unfeigned consideration.  
ASHBURTON.

Hon. DANIEL WEBSTER,  
&c., &c., &c.

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*Mr. Webster to Lord Ashburton.*

DEPARTMENT OF STATE,  
Washington, August 6, 1842.

Your lordship's note of the 28th of July, in answer to mine of the 27th, respecting the case of the "Caroline," has been received and laid before the President.

The President sees with pleasure that your lordship fully admits those great principles of public law, applicable to cases of this kind, which this Government has expressed; and that on your part, as on ours, respect for the inviolable character of the territory of independent States, is the most essential foundation of civilization. And while it is admitted, on both sides, that there are exceptions to this rule, he is gratified to find that your lordship admits that such exceptions must come within the limitations stated and the terms used in a former communication from this Department to the British Plenipotentiary here. Undoubtedly it is just, that while it is admitted that exceptions growing out of the great law of self-defence do exist, those exceptions should be confined to cases in which the "necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."

Understanding these principles alike, the difference between the two Governments is only whether the facts in the case of the "Caroline" make out a case of such necessity for the purpose of self-defence. Seeing that the transaction is not recent, having happened in the time of one of his predecessors; seeing that your lordship, in the name of your Government, solemnly declares that no slight or disrespect was intended to the sovereign authority of the United States; seeing that it is acknowledged that whether justifiable or not, there was yet a violation of the territory of the United States, and that you are instructed to say that your Government consider that as a most serious occurrence; seeing, finally, that it is now admitted

that an explanation and apology for this violation was due at the time, the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two Governments.

As to that part of your lordship's note which relates to other occurrences springing out of the case of the "Caroline," with which occurrences the name of Alexander McLeod has become connected, I have to say that the Government of the United States entirely adheres to the sentiments and opinions expressed in the communications from this Department to Mr. Fox. This Government has admitted, that for an act committed by the command of his sovereign, *jure belli*, an individual can not be responsible, in the ordinary courts of another State. It would regard it as a high indignity if a citizen of its own, acting under its authority, and by its special command, in such cases, were held to answer in a municipal tribunal, and to undergo punishment, as if the behest of his Government were no defence or protection to him.

But your lordship is aware that in regular constitutional Governments, persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England; it is so in the colonies and provinces of England. The forms of judicial proceeding differ, in different countries, being more rapid in some and more dilatory in others; and it may be added, generally more dilatory, or at least more cautious, in cases affecting life, in Governments of a strictly limited than in those of a more unlimited character. It was a subject of regret that the release of McLeod was so long delayed. A State court, and that not of the highest jurisdiction, decided that, on summary application, embarrassed, as it would appear, by technical difficulties, he could not be released by that court. His discharge, shortly afterward, by a jury, to whom he preferred to submit his case, rendered unnecessary the further prosecution of the legal question. It is for the Congress of the United States, whose attention has been called to the subject, to say what further provision ought to be made to expedite proceedings in such cases; and, in answer to your lordship's question toward the close of your note, I have to say that the Government of the United States holds itself, not only fully disposed, but fully competent, to carry into practice every principle which it avows or acknowledges, and to fulfil every duty and obligation which it owes to foreign Governments, their citizens, or subjects.

I have the honor to be, my lord, with great consideration, your obedient servant,

DANIEL WEBSTER

Lord ASHBURTON,  
 &c., &c., &c.

## CASE OF THE "CREOLE."

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*Mr. Webster to Lord Ashburton.*

DEPARTMENT OF STATE,  
Washington, August 1, 1842.

MY LORD: The President has learned with much regret that you are not empowered by your Government to enter into a formal stipulation for the better security of vessels of the United States, when meeting with disasters in passing between the United States and the Bahama islands, and driven, by such disasters, into British ports. This is a subject which is deemed to be of great importance, and which can not, on the present occasion, be overlooked.

Your lordship is aware that several cases have occurred within the last few years which have caused much complaint. In some of these cases compensation has been made by the English Government for the interference of the local authorities with American vessels having slaves on board, by which interference these slaves were set free. In other cases, such compensation has been refused. It appears to the President to be for the interest of both countries that the recurrence of similar cases in future should be prevented as far as possible.

Your lordship has been acquainted with the case of the "Creole," a vessel carried into the port of Nassau last winter by persons who had risen upon the lawful authority of the vessel, and, in the accomplishment of their purpose, had committed murder on a person on board.

The opinions which that occurrence gave occasion for this Government to express, in regard to the rights and duties of friendly and civilized maritime states, placed by Providence near to each other, were well considered, and are entertained with entire confidence. The facts in the particular case of the "Creole" are controverted: positive and officious interference by the colonial authorities to set the slaves free being alleged on one side and denied on the other.

It is not my present purpose to discuss this difference of opinion as to the evidence in the case, as it at present exists, because the rights of individuals having rendered necessary a more thorough and a judicial investigation of facts and circumstances attending the transaction, such investigation is understood to be now in progress, and its result, when known, will render me more able than at this moment to present to the British Government a full and accurate view of the whole case. But it is my purpose, and my duty, to invite your lordship's attention to the general subject, and your serious consideration of some practical means of giving security to the coasting trade of the United States against unlawful annoyance and interruption along this part of their shore. The Bahama islands approach the coast of Florida within a few leagues, and, with the coast, form a long and narrow channel, filled with innumerable small islands and banks of sand, and the navigation difficult and



dangerous, not only on these accounts, but from the violence of the winds and the variable nature of the currents. Accidents are of course frequent, and necessity often compels vessels of the United States, in attempting to double Cape Florida, to seek shelter in the ports of these islands. Along this passage the Atlantic States hold intercourse with the States on the Gulf and the Mississippi, and through it the products of the valley of that river (a region of vast extent and boundless fertility) find a main outlet to the sea, in their destination to the markets of the world.

No particular ground of complaint exists as to the treatment which American vessels usually receive in these ports, unless they happen to have slaves on board; but, in cases of that kind, complaints have been made, as already stated, of officious interference of the colonial authorities with the vessel, for the purpose of changing the condition in which these persons are, by the laws of their own country, and of setting them free.

In the southern States of this Union slavery exists by the laws of the States and under the guarantee of the Constitution of the United States; and it has existed in them from a period long antecedent to the time when they ceased to be British colonies. In this state of things, it will happen that slaves will be often on board coasting vessels, as hands, as servants attending the families of their owners, or for the purpose of being carried from port to port. For the security of the rights of their citizens, when vessels, having persons of this description on board, are driven by stress of weather, or carried by unlawful force, into British ports, the United States propose the introduction of no new principle into the law of nations. They require only a faithful and exact observance of the injunctions of that code, as understood and practised in modern times.

Your lordship observes that I have spoken only of American vessels driven into British ports by the disasters of the seas, or carried in by unlawful force. I confine my remarks to these cases, because they are the common cases, and because they are the cases which the law of nations most emphatically exempts from interference. The maritime law is full of instances of the application of that great and practical rule, which declares that that which is the clear result of necessity ought to draw after it no penalty and no hazard. If a ship be driven, by stress of weather, into a prohibited port, or into an open port, with prohibited articles on board, in neither case is any forfeiture incurred. And what may be considered a still stronger case, it has been decided by eminent English authority, and that decision has received general approbation, that if a vessel be driven, by necessity, into a port strictly blockaded, this necessity is good defence, and exempts her from penalty.

A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected, exclusively, to the jurisdiction of that nation. If against the will of her master, or owner, she be driven or carried nearer to the land, or even into port, those who have, or who ought to have, control over her, struggling all the while to keep her upon the high seas, and so within the exclusive jurisdiction of her own Government, what reason or justice is there in creating a distinction between her rights and immunities, in a position, thus the result of absolute necessity, and the same rights and immunities before superior power had forced her out of her voluntary course?

But, my lord, the rule of law, and the comity and practice of nations, go much further than these cases of necessity, and allow even to a merchant vessel, coming into any open port of another country voluntarily, for the

purposes of lawful trade, to bring with her, and keep over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country, excluding to this extent, by consequence, the jurisdiction of the local law. A ship, say the publicists, though at anchor in a foreign harbor, preserves its jurisdiction and its laws. It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the state retains its jurisdiction over them; and, according to the commonly-received custom, this jurisdiction is preserved over the vessels, even in parts of the sea subject to a foreign dominion.

This is the doctrine of the law of nations, clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practices of modern nations.

If a murder be committed on board of an American vessel, by one of the crew upon another or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign state or sovereignty, the offence is cognizable and punishable by the proper court of the United States, in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same.

It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must doubtless be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of Governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships, not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.

If a vessel be driven by weather into the ports of another nation, it would hardly be alleged by any one that, by the mere force of such arrival within the waters of the state, the law of that state would so attach to the vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man. Nor ought it to affect their personal obligations, or existing relations between themselves; nor was it ever supposed to have such effect, until the delicate and exciting question which has caused these interferences in the British islands arose. The local law in these cases dissolves no obligations or relations lawfully entered into or lawfully existing according to the laws of the ship's country. If it did, intercourse of civilized men between nation and nation must cease. Marriages are frequently celebrated in one country in a manner not lawful or valid in another; but did anybody ever doubt that marriages are valid all over the civilized world, if valid in the country in which they took place? Did any one ever imagine that local law acted upon such marriages to annihilate

their obligation, if the party should visit a country in which marriages must be celebrated in another form ?

It may be said that, in such instances, personal relations are founded in contract, and therefore to be respected ; but that the relation of master and slave is not founded in contract, and therefore is to be respected only by the law of the place which recognises it. Whoever so reasons encounters the authority of the whole body of public law from Grotius down ; because there are numerous instances in which the law itself presumes or implies contracts ; and prominent among these instances is the very relation which we are now considering and which relation is holden by law to draw after it mutuality of obligation.

Is not the relation between a father and his minor children acknowledged, when they go abroad ? And on what contract is this founded, but a contract raised by general principles of law, from the relation of the parties ?

Your lordship will please to bear in mind that the proposition which I am endeavoring to support is, that by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations, for the purpose of trade, are presumed to be allowed to bring with them, and to retain, for their protection and government, the jurisdiction and laws of their own country. All this, I repeat, is presumed to be allowed ; because the ports are open, because trade is invited, and because, under these circumstances, such permission or allowance is according to general usage. It is not denied that all this may be refused ; and this suggests a distinction, the disregard of which may perhaps account for most of the difficulties arising in cases of this sort ; that is to say, the distinction between what a state may do, if it pleases, and what it is presumed to do, or not to do, in the absence of any positive declaration of its will. A state might declare that all foreign marriages should be regarded as null and void within its territory ; that a foreign father, arriving with an infant son, should no longer have authority or control over him ; that, on the arrival of a foreign vessel in its ports, all shipping articles and all indentures of apprenticeship between her crew and her owners or masters should cease to be binding. These, and many other things equally irrational and absurd, a sovereign state has doubtless the power to do ; but they are not to be presumed. It is not to be taken for granted, *ab ante*, that it is the will of the sovereign state thus to withdraw itself from the circle of civilized nations. It will be time enough to believe this to be its intention, when it formally announces that intention by appropriate enactments, edicts, or other declarations.

In regard to slavery within the British territories, there is a well-known and clear promulgation of the will of the sovereign authority ; that is to say, there is a well-known rule of her law. As to England herself, that law has long existed ; and recent acts of Parliament establish the same law for the colonies. The usual mode of stating the rule of English law is, that no sooner does a slave reach the shore of England than he is free. This is true ; but it means no more than that when a slave comes within the exclusive jurisdiction of England he ceases to be a slave, because the law of England positively and notoriously prohibits and forbids the existence of such a relation between man and man. But it does not mean that English authorities, with this rule of English law in their hands, may enter where the jurisdiction of another nation is acknowledged to exist, and there destroy rights, obligations, and interests, lawfully existing under the authority of such other nation. No such construction, and no such effect, can be rightfully given to the British law. It is true that it is competent to the British Par-

liament, by express statute provision, to declare that no foreign jurisdiction of any kind should exist in or over a vessel after its arrival voluntarily in her ports. And so she might close all her ports to the ships of all nations. A state may also declare, in the absence of treaty stipulations, that foreigners shall not sue in her courts, nor travel in her territories, nor carry away funds or goods received for debts. We need not inquire what would be the condition of a country that should establish such laws, nor in what relation they would leave her toward the states of the civilized world. Her power to make such laws is unquestionable; but, in the absence of direct and positive enactments to that effect, the presumption is that the opposites of these things exist. While her ports are open to foreign trade, it is to be presumed that she expects foreign ships to enter them, bringing with them the jurisdiction of their own Government, and the protection of its laws, to the same extent that her ships and the ships of other commercial states carry with them the jurisdiction of their respective Governments into the open ports of the world; just as it is presumed, while the contrary is not avowed, that strangers may travel in a civilized country in a time of peace, sue in its courts, and bring away their property.

A merchant vessel enters the port of a friendly state, and enjoys while there the protection of her own laws, and is under the jurisdiction of her own Government, not in derogation of the sovereignty of the place, but by the presumed allowance or permission of that sovereignty. This permission or allowance is founded on the comity of nations, like the other cases which have been mentioned; and this comity is part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent until they make their dissent known. In the silence of any positive rule, affirming or denying or restraining the operation of foreign laws, their tacit adoption is presumed, to the usual extent. It is upon this ground that the courts of law expound contracts according to the law of the place in which they are made; and instances almost innumerable exist, in which, by the general practice of civilized countries, the laws of one will be recognised and often executed in another. This is the comity of nations; and it is upon this, as its solid basis, that the intercourse of civilized states is maintained.

But while that which has now been said is understood to be the voluntary and adopted law of nations, in cases of the voluntary entry of merchant vessels into the ports of other countries, it is nevertheless true, that vessels in such ports, only through an overruling necessity, may place their claim for exemption from interference on still higher principles; that is to say, principles held in more sacred regard by the comity, the courtesy, or indeed the common sense of justice of all civilized states.

Even in regard to cases of necessity, however, there are things of an unfriendly and offensive character, which yet it may not be easy to say that a nation might not do. For example, a nation might declare her will to be, and make it the law of her dominions, that foreign vessels, cast away on her shores, should be lost to their owners, and subject to the ancient law of wreck. Or a neutral state, while shutting her ports to the armed vessels of belligerents, as she has a right to do, might resolve on seizing and confiscating vessels of that description, which should be driven to take shelter in her harbors by the violence of the storms of the ocean. But laws of this character, however within the absolute competence of Governments, could only be passed, if passed at all, under willingness to meet the last responsibility to which nations are subjected.

The presumption is stronger, therefore, in regard to vessels driven into foreign ports by necessity, and seeking only temporary refuge, than in regard to those which enter them voluntarily, and for purposes of trade, that they will not be interfered with; and that, unless they commit, while in port, some act against the laws of the place, they will be permitted to receive supplies to repair damages, and to depart unmolested.

If, therefore, vessels of the United States, pursuing lawful voyages, from port to port, along their own shore, are driven by stress of weather, or carried by unlawful force, into English ports, the Government of the United States can not consent that the local authorities in those ports shall take advantage of such misfortunes, and enter them, for the purpose of interfering with the condition of persons or things on board, as established by their own laws. If slaves, the property of citizens of the United States, escape into the British territories, it is not expected that they will be restored. In that case, the territorial jurisdiction of England will have become exclusive over them, and must decide their condition. But slaves on board of American vessels, lying in British waters, are not within the exclusive jurisdiction of England; or under the exclusive operation of English law; and this founds the broad distinction between the cases. If persons, guilty of crimes in the United States, seek an asylum in the British dominions, they will not be demanded, until provision for such cases be made by treaty: because the giving-up of criminals, fugitive from justice, is agreed and understood to be a matter in which every nation regulates its conduct according to its own discretion. It is no breach of comity to refuse such surrender.

On the other hand, vessels of the United States, driven by necessity into British ports, and staying there no longer than such necessity exists, violating no law, nor having intent to violate any law, will claim, and there will be claimed for them, protection and security, freedom from molestation, and from all interference with the character or condition of persons or things on board. In the opinion of the Government of the United States, such vessels, so driven and so detained by necessity in a friendly port, ought to be regarded as still pursuing their original voyage, and turned out of their direct course only by disaster, or by wrongful violence; that they ought to receive all assistance necessary to enable them to resume that direct course; and that interference and molestation by the local authorities, where the whole voyage is lawful, both in act and intent, is ground for just and grave complaint.

Your lordship's discernment and large experience in affairs can not fail to suggest to you how important it is to merchants and navigators engaged in the coasting trade of a country so large in extent as the United States, that they should feel secure against all but the ordinary causes of maritime loss. The possessions of the two Governments closely approach each other. This proximity which ought to make us friends and good neighbors, may, without proper care and regulation, itself prove a ceaseless cause of vexation, irritation, and disquiet.

If your lordship has no authority to enter into a stipulation by treaty for the prevention of such occurrences hereafter as have already happened, occurrences so likely to disturb that peace between the two countries which it is the object of your lordship's mission to establish and confirm, you may still be so far acquainted with the sentiments of your Government as to be able to engage that instructions shall be given to the local authorities in the islands, which shall lead them to regulate their conduct in conformity with the rights of citizens of the United States, and the just expectations of their

Government, and in such manner as shall, in future, take away all reasonable ground of complaint. It would be with the most profound regret that the President should see that, while it is now hoped so many other subjects of difference may be harmoniously adjusted, nothing should be done in regard to this dangerous source of future collisions.

I avail myself of this occasion to renew to your lordship the assurances of my distinguished consideration.

DANIEL WEBSTER.

Lord ASHBURTON,  
 &c., &c., &c.

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*Lord Ashburton to Mr. Webster.*

WASHINGTON, August 6, 1842.

SIR: You may be well assured that I am duly sensible of the great importance of the subject to which you call my attention in the note which you did me the honor of addressing me the 1st instant, in which you inform me that the President had been pleased to express his regret that I was not empowered by my Government to enter into a formal stipulation for the better security of vessels of the United States, when meeting with disasters in passing between the United States and the Bahama islands, and driven by such disasters into British ports.

It is, I believe, unnecessary that I should tell you that the case of the Creole was known in London a few days only before my departure. No complaint had at that time been made by Mr. Everett. The subject was not, therefore, among those which it was the immediate object of my mission to discuss. But at the same time I must admit that, from the moment I was acquainted with the facts of this case, I was sensible of all its importance, and I should not think myself without power to consider of some adjustment of, and remedy for, a great acknowledged difficulty, if I could see my way clearly to any satisfactory course, and if I had not arrived at the conclusion, after very anxious consideration, that, for the reasons which I will state, this question had better be treated in London, where it will have a much increased chance of settlement, on terms likely to satisfy the interests of the United States.

The immediate case of the Creole would be easily disposed of; but involves a class and description of cases which, for the purpose of affording that security you seek for the trade of America through the Bahama channel, brings into consideration questions of law, both national and international, of the highest importance; and, to increase the delicacy and difficulty of the subject, public feeling is sensitively alive to everything connected with it. These circumstances bring me to the conviction that, although I really believe that much may be done to meet the wishes of your Government, the means of doing so would be best considered in London, where immediate reference may be had to the highest authorities, on every point of delicacy and difficulty that may arise. Whatever I might attempt would be more or less under the disadvantage of being fettered by apprehensions of responsibility, and I might thereby be kept within limits which my Government at home might disregard. In other words, I believe you would have a better

chance in this settlement with them than with me. I state this after some imperfect endeavors, by correspondence, to come at satisfactory explanations. If I were in this instance treating of ordinary material interests, I should proceed with more confidence; but anxious as I unfeignedly am that all questions likely to disturb the future good understanding between us should be averted, I strongly recommend this question of the security of the Bahama channel being referred for discussion in London.

This opinion is more decidedly confirmed by your very elaborate and important argument on the application of the general principles of the law of nations to these subjects—an argument to which your authority necessarily gives great weight, but in which I would not presume to follow you with my own imperfect means. Great Britain and the United States, covering all the seas of the world with their commerce, have the greatest possible interest in maintaining sound and pure principles of international law, as well as the practice of reciprocal aid and good offices in all their harbors and possessions. With respect to the latter, it is satisfactory to know that the disposition of the respective Governments and people leaves little to be desired, with the single exception of those very delicate and perplexing questions which have recently arisen from the state of slavery, and even these seem confined, and likely to continue to be confined, to the narrow passage of the Bahama channel. At no other part of the British possessions are American vessels with slaves ever likely to touch, nor are they likely to touch there otherwise than from the pressure of very urgent necessity. The difficulty, therefore, as well as the desired remedy, is apparently confined within narrow limits.

Upon the great general principles affecting this case we do not differ. You admit that if slaves, the property of American citizens, escape into British territories, it is not expected that they will be restored; and you may be well assured that there is no wish on our part that they should reach our shores, or that British possessions should be used as decoys for the violators of the laws of a friendly neighbor.

When these slaves do reach us, by whatever means, there is no alternative. The present state of British law is in this respect too well known to require repetition, nor need I remind you that it is exactly the same with the laws of every part of the United States where a state of slavery is not recognised; and that the slave put on shore at Nassau would be dealt with exactly as would a foreign slave landed, under any circumstances whatever, at Boston.

But what constitutes the being within British dominion, from which these consequences are to follow? Is a vessel passing through the Bahama channel, and forced involuntarily, either from storm or mutiny, into British waters, to be so considered? What power have the authorities of those islands to take cognizance of persons or property in such vessels? These are questions which you, sir, have discussed at great length, and with evident ability. Although you have advanced some propositions which rather surprise and startle me, I do not pretend to judge them; but what is very clear is, that great principles are involved in a discussion which it would ill become me lightly to enter upon; and I am confirmed by this consideration in wishing that the subject be referred to where it will be perfectly weighed and examined.

It behooves the authorities of our two Governments well to guard themselves against establishing by their diplomatic intercourse false precedents and principles, and that they do not, for the purpose of meeting a passing difficulty, set examples which may hereafter mislead the world.

It is not intended on this occasion to consider in detail the particular in-

stances which have given rise to these discussions. They have already been stated and explained. Our object is rather to look to the means of future prevention of such occurrences. That this may be obtained, I have little doubt, although we may not be able immediately to agree on the precise stipulations of a treaty. On the part of Great Britain, there are certain great principles too deeply rooted in the consciences and sympathies of the people for any minister to be able to overlook; and any engagement I might make in opposition to them would be instantly disavowed; but, at the same time that we maintain our own laws within our own territories, we are bound to respect those of our neighbors, and to listen to every possible suggestion of means of averting from them every annoyance and injury. I have great confidence that this may be effectually done in the present instance; but the case to be met and remedied is new, and must not be too hastily dealt with. You may, however, be assured that measures so important for the preservation of friendly intercourse between the two countries shall not be neglected.

In the meantime, I can engage that instructions shall be given to the Governors of her majesty's colonies on the southern borders of the United States to execute their own laws with careful attention to the wish of their Government to maintain good neighborhood, and that there shall be no officious interference with American vessels driven by accident or by violence into those ports. The laws and duties of hospitality shall be executed, and these seem neither to require nor to justify any further inquiry into the state of persons or things on board of vessels so situated, than may be indispensable to enforce the observance of the municipal law of the colony, and the proper regulation of its harbors and waters.

A strict and careful attention to these rules, applied in good faith to all transactions as they arise, will, I hope and believe, without any abandonment of great and general principles, lead to the avoidance of any excitement or agitation on this very sensitive subject of slavery, and, consequently, of those irritating feelings which may have a tendency to bring into peril all the great interests connected with the maintenance of peace.

I further trust that friendly sentiments, and a conviction of the importance of cherishing them, will, on all occasions, lead the two countries to consider favorably any further arrangements which may be judged necessary for the reciprocal protection of their interests.

I hope, sir, that this explanation on this very important subject will be satisfactory to the President, and that he will see in it no diminution of that earnest desire, which you have been pleased to recognise in me, to perform my work of reconciliation and friendship; but that he will rather perceive in my suggestion, in this particular instance, that it is made with a well-founded hope of thereby better obtaining the object we have in view.

I beg to renew to you, sir, the assurances of my high consideration.

ASHBURTON.

HON. DANIEL WEBSTER, &c., &c., &c.

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*Mr. Webster to Lord Ashburton.*

DEPARTMENT OF STATE,  
WASHINGTON, August 8, 1842.

MY LORD: I have the honor to acknowledge the receipt of your lordship's note of the 6th instant, in answer to mine of the 1st, upon the subject



of a stipulation for the better security of American vessels driven by accident or carried by force into the British West India ports.

The President would have been gratified if you had felt yourself at liberty to proceed at once to consider of some proper arrangement, by formal treaty, for this object ; but there may be weight in the reasons which you urge for referring such mode of stipulation for consideration in London.

The President places his reliance on those principles of public law which were stated in my note to your lordship, and which are regarded as equally well founded and important ; and on your lordship's engagement that instructions shall be given to the Governors of her majesty's colonies to execute their own laws with careful attention to the wish of their Government to maintain good neighborhood, and that there shall be no officious interference with American vessels driven by accident or by violence into those ports ; that the laws and duties of hospitality shall be executed, and that these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated than may be indispensable to enforce the observance of the municipal law of the colony, and the proper regulation of its harbors and waters. He indulges the hope, nevertheless, that, actuated by a just sense of what is due to the mutual interests of the two countries, and the maintenance of a permanent peace between them, her majesty's Government will not fail to see the importance of removing, by such further stipulations, by treaty or otherwise, as may be found to be necessary, all cause of complaint connected with this subject.

I have the honor to be, with high consideration, your lordship's obedient servant,

DANIEL WEBSTER.

LORD ASHBURTON, &c., &c., &c.

## IMPRESSMENT.

*Mr. Webster to Lord Ashburton.*

DEPARTMENT OF STATE,  
Washington, August 8, 1842.

MY LORD: We have had several conversations on the subject of impressment, but I do not understand that your lordship has instructions from your Government to negotiate upon it, nor does the Government of the United States see any utility in opening such negotiation, unless the British Government is prepared to renounce the practice in all future wars.

No cause has produced, to so great an extent, and for so long a period, disturbing and irritating influences on the political relations of the United States and England as the impressment of seamen by British cruisers from American merchant vessels.

From the commencement of the French revolution to the breaking out of the war between the two countries in 1812, hardly a year elapsed without loud complaint and earnest remonstrance. A deep feeling of opposition to the right claimed, and to the practice exercised under it, and not unfrequently exercised without the least regard to what justice and humanity would have dictated, even if the right itself had been admitted, took possession of the public mind of America, and this feeling, it is well known, co-operated most powerfully with other causes to produce the state of hostilities which ensued.

At different periods, both before and since the war, negotiations have taken place between the two Governments, with the hope of finding some means of quieting these complaints. At some times, the effectual abolition of the practice has been requested and treated of; at other times, its temporary suspension; and, at other times again, the limitation of its exercise and some security against its enormous abuses.

A common destiny has attended these efforts; they have all failed. The question stands at this moment where it stood fifty years ago. The nearest approach to a settlement was a convention proposed in 1803, and which had come to the point of signature, when it was broken off in consequence of the British Government insisting that the *narrow seas* should be expressly excepted, out of the sphere over which the contemplated stipulations against impressment should extend. The American minister, Mr. King, regarded this exception as quite inadmissible, and chose rather to abandon the negotiation than to acquiesce in the doctrine which it proposed to establish.

England asserts the right of impressing British subjects, in time of war, out of neutral merchant vessels, and of deciding by her visiting officers, who, among the crews of such merchant vessels, are British subjects. She asserts this as a legal exercise of the prerogative of the crown; which prerogative is alleged to be founded on the English law of the perpetual and indissoluble allegiance of the subject, and his obligation, under all circumstances, and for his whole life, to render military service to the crown whenever required.

This statement, made in the words of eminent British jurists, shows, at once, that the English claim is far broader than the basis or platform on which it is raised. The law relied on is English law; the obligations insisted

on are obligations existing between the crown of England and its subjects. This law and these obligations, it is admitted, may be such as England may choose they shall be. But then they must be confined to the parties. Impressment of seamen, out of and beyond English territory, and from on board the ships of other nations, is an interference with the rights of other nations; is further, therefore, than English prerogative can legally extend; and is nothing but an attempt to enforce the peculiar law of England beyond the dominions and jurisdiction of the crown. The claim asserts an extra-territorial authority for the law of British prerogative, and assumes to exercise this extra-territorial authority, to the manifest injury and annoyance of the citizens and subjects of other States, on board their own vessels on the high seas.

Every merchant vessel on the seas is rightfully considered as part of the territory of the country to which it belongs. The entry, therefore, into such vessel, being neutral, by a belligerent, is an act of force, and is, *prima facie*, a wrong, a trespass, which can be justified only when done for some purpose, allowed to form a sufficient justification by the law of nations. But a British cruiser enters an American merchant vessel in order to take therefrom supposed British subjects; offering no justification therefor, under the law of nations, but claiming the right under the law of England respecting the King's prerogative. This can not be defended. English soil, English territory, English jurisdiction, is the appropriate sphere for the operation of English law. The ocean is the sphere of the law of nations; and any merchant vessel on the seas is, by that law, under the protection of the laws of her own nation, and may claim immunity, unless in cases in which that law allows her to be entered or visited.

If this notion of perpetual allegiance, and the consequent power of the prerogative, was the law of the world; if it formed part of the conventional code of nations, and was usually practised like the right of visiting neutral ships, for the purpose of discovering and seizing enemy property, then impressment might be defended as a common right, and there would be no remedy for the evil till the national code should be altered. But this is by no means the case. There is no such principle incorporated into the code of nations. The doctrine stands only as English law—not as national law; and English law can not be of force beyond English dominion. Whatever duties or relations that law creates between the sovereign and his subjects, can be enforced and maintained only within the realm, or proper possessions or territory of the sovereign. There may be quite as just a prerogative right to the property of subjects as to their personal services, in an exigency of the State; but no Government thinks of controlling by its own laws property of its subjects situated abroad; much less does any Government think of entering the territory of another power for the purpose of seizing such property and applying it to its own uses. As laws, the prerogatives of the crown of England have no obligation on persons or property domiciled or situated abroad.

“When, therefore,” says an authority not unknown or unregarded on either side of the Atlantic, “we speak of the right of a state to bind its own native subjects every where, we speak only of its own claim and exercise of sovereignty over them, when they return within its own territorial jurisdiction, and not of its right to compel or require obedience to such laws, on the part of other nations, within their own territorial sovereignty. On the contrary, every nation has an exclusive right to regulate persons and things within its own territory, according to its sovereign will and public polity.”

The good sense of these principles, their remarkable pertinency to the sub-

ect now under consideration, and the extraordinary consequences resulting from the British doctrine, are signally manifested by that which we see taking place every day. England acknowledges herself over-burdened with population of the poorer classes. Every instance of the emigration of persons of those classes is regarded by her as a benefit. England, therefore, encourages emigration; means are notoriously supplied to emigrants to assist their conveyance, from public funds; and the new world, and most especially these United States, receive the many thousands of her subjects thus ejected from the bosom of their native land by the necessities of their condition. They come away from poverty and distress, in over-crowded cities, to seek employment, comfort, and new homes, in a country of free institutions, possessed by a kindred race, speaking their own language, and having laws and usages in many respects like those to which they have been accustomed; and a country which, upon the whole, is found to possess more attractions for persons of their character and condition than any other on the face of the globe. It is stated that in the quarter of the year ending with June last, more than twenty-six thousand emigrants left the single port of Liverpool for the United States, being four or five times as many as left the same port within the same period for the British colonies and all other parts of the world. Of these crowds of emigrants, many arrive in our cities in circumstances of great destitution, and the charities of the country, both public and private, are severely taxed to relieve their immediate wants. In time they mingle with the new community in which they find themselves, and seek means of living; some find employment in the cities, others go to the frontiers, to cultivated lands reclaimed from the forest; and a greater or less number of the residue, becoming in time naturalized citizens, enter into the merchant service, under the flag of their adopted country.

Now, my lord, if war should break out between England and a European power, can anything be more unjust, anything more irreconcilable to the general sentiments of mankind, than that England should seek out these persons, thus encouraged by her, and compelled by their own condition to leave their native homes, tear them away from their new employments, their new political relations, and their domestic connexions, and force them to undergo the dangers and hardships of military service, for a country which has thus ceased to be their own country? Certainly, certainly, my lord, there can be but one answer to this question. Is it not far more reasonable that England should either prevent such emigration of her subjects, or that, if she encourage and promote it, she should leave them, not to the embroilment of a double and a contradictory allegiance, but to their own voluntary choice, to form such relations, political or social, as they see fit, in the country where they are to find their bread, and to the laws and institutions of which they are to look for defence and protection?

A question of such serious importance ought now to be put at rest. If the United States give shelter and protection to those whom the policy of England annually casts upon their shores—if, by the benign influences of their Government and institutions, and by the happy condition of the country, those emigrants become raised from poverty to comfort, finding it easy even to become landholders, and being allowed to partake in the enjoyment of all civil rights—if all this may be done (and all this is done, under the countenance and encouragement of England herself), is it not high time, my lord, that, yielding that which had its origin in feudal ideas

as inconsistent with the present state of society, and intercourse and relations subsisting between the old w England should, at length, formally disclaim all right to such persons, and renounce all control over their conduct?

But impressment is subject to objections of a much wider range. If it could be justified in its application to those who are declared to be its only objects, it still remains true that, in its exercise, it touches the political rights of other governments, and endangers the security of their own native subjects and citizens. The sovereignty of the state is concerned in maintaining its exclusive jurisdiction and possession over its merchant ships on the seas, except so far as the law of nations justifies intrusion upon that possession for special purposes; and all experience has shown that no member of a crew, wherever born, is safe against impressment when a ship is visited.

The evils and injuries resulting from the actual practice can hardly be overstated, and have ever proved themselves to be such as should lead to its relinquishment, even if it were founded in any defensible principle. The difficulty of discriminating between English subjects and American citizens has always been found to be great, even when an honest purpose of discrimination has existed. But the lieutenant of a man-of-war, having necessity for men, is apt to be a summary judge, and his decisions will be quite as significant of his own wants and his own power as of the truth and justice of the case. An extract from a letter of Mr. King, of the 13th of April, 1797, to the American Secretary of State, shows something of the enormous extent of these wrongful seizures:

"Instead of a few, and these in many instances equivocal cases, I have," says he, "since the month of July past, made application for the discharge, from British men-of-war, of two hundred and seventy-one seamen, who, stating themselves to be Americans, have claimed my interference. Of this number eighty-six have been ordered by the Admiralty to be discharged, thirty-seven more have been detained as British subjects or as American volunteers, or for want of proof that they are Americans, and to my applications for the discharge of the remaining one hundred and forty-eight, I have received no answer—the ships on board of which these seamen were detained having, in many instances, sailed before an examination was made in consequence of my application.

"It is certain that some of those who have applied to me are not American citizens, but the exceptions are, in my opinion, few, and the evidence, exclusive of certificates, has been such as, in most cases, to satisfy me that the applicants were real Americans, who have been forced into the British service, and who, with singular constancy, have generally persevered in refusing pay or bounty, though in some instances they have been in service more than two years."

But the injuries of impressment are by no means confined to its immediate subjects or the individuals on whom it is practised. Vessels suffer from the weakening of their crews, and voyages are often delayed, and not unfrequently broken up, by subtraction from the number of necessary hands by impressment. And what is still of greater and more general moment, the fear of impressment has been found to create great difficulty in obtaining sailors for the American merchant service in times of European war. Seafaring men, otherwise inclined to enter into that service, are, as experience has shown, deterred by the fear of finding themselves ere long in compulsory

British ships of war. Many instances have occurred, fully proof, in which raw seamen, natives of the United States, fresh from the bosom of agriculture, entering for the first time on shipboard, have been impressed before they made the land, placed on the decks of British men-of-war, and compelled to serve for years before they could obtain their release, or revisit their country and their homes. Such instances become known, and their effect in discouraging young men from engaging in the merchant service of their country can neither be doubted nor wondered at. More than all, my lord, the practice of impressment, whenever it has existed, has produced not conciliation and good feeling, but resentment, exasperation, and animosity, between the two great commercial countries of the world.

In the calm and quiet which have succeeded the late war—a condition so favorable for dispassionate consideration—England herself has evidently seen the harshness of impressment, even when exercised on seamen in her own merchant service, and she has adopted measures calculated, if not to renounce the power or to abolish the practice, yet, at least, to supersede its necessity by other means of manning the royal navy, more compatible with justice and the rights of individuals, and far more conformable to the spirit and sentiments of the age.

Under these circumstances, the Government of the United States has used the occasion of your lordship's pacific mission to review this whole subject, and to bring it to your notice and that of your Government. It has reflected on the past, pondered the condition of the present, and endeavored to anticipate, so far as might be in its power, the probable future; and I am now to communicate to your lordship the result of these deliberations.

The American Government, then, is prepared to say that the practice of impressing seamen from American vessels can not hereafter be allowed to take place. That practice is founded on principles which it does not recognise, and is invariably attended by consequences so unjust, so injurious, and of such formidable magnitude, as can not be submitted to.

In the early disputes between the two Governments on this so long-contested topic, the distinguished person to whose hands were first intrusted the seals of this Department declared, that "the simplest rule will be, that the vessel being American shall be evidence that the seamen on board are such."

Fifty years' experience, the utter failure of many negotiations, and a careful reconsideration now had, of the whole subject at a moment when the passions are laid, and no present interest or emergency exists to bias the judgment, have fully convinced this Government that this is not only the simplest and best, but the only rule, which can be adopted and observed, consistently with the rights and honor of the United States and the security of their citizens. That rule announces therefore, what will hereafter be the principle maintained by their Government. In every regularly documented American merchant vessel the crew who navigate it will find their protection in the flag which is over them.

This announcement is not made, my lord, to revive useless recollections of the past, nor to stir the embers from fires which have been, in a great degree, smothered by many years of peace. Far otherwise. Its purpose is to extinguish those fires effectually, before new incidents arise to fan them into flame. The communication is in the spirit of peace, and for the sake of peace, and springs from a deep and conscientious conviction that high interests of both nations require that this so-long-contested and controverted subject should now be finally put to rest. I persuade myself, my lord, that you

will do justice to this frank and sincere avowal of motive  
communicate your sentiments, in this respect, to your Gov

This letter closes, my lord, on my part, our official com- , and  
I gladly use the occasion to offer you the assurance of my high. sincere  
regard.

DANIEL WEBSTER.

Lord ASHBURTON, &c., &c., &c.

*Lord Ashburton to Mr. Webster.*

WASHINGTON, August 9, 1842.

SIR: The note you did me the honor of addressing me the 8th instant, on the subject of impressment, shall be transmitted without delay to my Government, and will, you may be assured, receive from them the deliberate attention which its importance deserves.

The object of my mission was mainly the settlement of existing subjects of difference, and no differences have or could have arisen of late years with respect to impressment, because the practice has since the peace wholly ceased and can not, consistently with existing laws and regulations for manning her majesty's navy, be, under the present circumstances, renewed.

Desirous, however, of looking far forward into futurity to anticipate even possible causes of disagreement, and sensible of the anxiety of the American people on this grave subject of past irritation, I should be sorry in any way to discourage the attempt at some settlement of it; and, although without authority to enter upon it here during the limited continuance of my mission, I entertain a confident hope that this task may be accomplished, when undertaken, with the spirit of candor and conciliation which has marked all our late negotiations.

It not being our intention to endeavor now to come to any agreement on this subject, I may be permitted to abstain from noticing, at length, your very ingenious arguments relating to it, and from discussing the graver matters of constitutional and international law growing out of them. These sufficiently show that the question is one requiring calm consideration; though I must, at the same time, admit that they prove a strong necessity of some settlement for the preservation of that good understanding which, I trust, we may flatter ourselves that our joint labors have now succeeded in establishing.

I am well aware that the laws of our two countries maintain opposite principles respecting allegiance to the sovereign. America, receiving every year, by thousands, the emigrants of Europe, maintains the doctrine suitable to her condition of the right of transferring allegiance at will. The laws of Great Britain have maintained, from all time, the opposite doctrine. The duties of allegiance are held to be indefeasible, and it is believed that this doctrine, under various modifications, prevails in most, if not in all, the civilized states of Europe.

Emigration, the modern mode by which the population of the world peaceably finds its level, is for the benefit of all, and eminently for the benefit of humanity. The fertile deserts of America are gradually advancing to the highest state of cultivation and production, while the emigrant acquires comfort which his own confined home could not afford him.

anything in our laws or our practice on either side tending to  
 each of providential humanity, we could not be too eager to  
 pro- say ; but as this does not appear to be the case, we may safely  
 leave part of the subject without indulging in abstract speculations, hav-  
 ing no material practical application to matters in discussion between us.

But it must be admitted that a serious practical question does arise, or  
 rather has existed, from practices formerly attending the mode of manning the  
 British navy in times of war. The principle is, that all subjects of the crown  
 are in case of necessity bound to serve their country, and the sea-faring man  
 is naturally taken for the naval service. This is not, as is sometimes sup-  
 posed, any arbitrary principle of monarchical government, but one founded  
 on the natural duty of every man to defend the life of his country ; and all  
 the analogy of your laws would lead to the conclusion that the same princi-  
 ple would hold good in the United States if their geographical position did  
 not make its application unnecessary.

The very anomalous condition of the two countries with relation to each  
 other here creates a serious difficulty. Our people are not distinguishable ;  
 and owing to the peculiar habits of sailors, our vessels are very generally  
 manned from a common stock. It is difficult, under these circumstances, to  
 execute laws which at times have been thought to be essential for the exist-  
 ence of the country, without risk of injury to others. The extent and im-  
 portance of those injuries, however, are so formidable that it is admitted that  
 some remedy should, if possible, be applied ; at all events, it must be fairly  
 and honestly attempted. It is true that during the continuance of peace no  
 practical grievance can arise ; but it is also true that it is for that reason the  
 proper season for the calm and deliberate consideration of an important sub-  
 ject. I have much reason to hope that a satisfactory arrangement respecting  
 it may be made, so as to set at rest all apprehension and anxiety ; and I will  
 only further repeat the assurance of the sincere disposition of my Govern-  
 ment favorably to consider all matters having for their object the promoting  
 and maintaining undisturbed kind and friendly feelings with the United  
 States.

I beg, sir, on this occasion of closing the correspondence with you con-  
 nected with my mission, to express the satisfaction I feel at its successful ter-  
 mination, and to assure you of my high consideration and personal esteem  
 and regard.

ASHBURTON.

HON. DANIEL WEBSTER,

Sr., Sr., Sr.























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